

AMENDED IN SENATE MAY 22, 1997

AMENDED IN SENATE APRIL 10, 1997

**SENATE BILL**

**No. 1311**

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**Introduced by Senators Schiff and Peace**

February 28, 1997

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An act to add Section 707.02 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1311, as amended, Schiff. Juvenile offenders.

Existing law authorizes the district attorney or other prosecuting officer to file an accusatory pleading against a minor in a court of criminal jurisdiction if the minor has been declared not a fit and proper subject to be dealt with under the juvenile court law or if the charges in a petition in the juvenile court have been transferred to a court of criminal jurisdiction.

This bill would require that when a prosecuting attorney seeks to have a minor tried in a court of criminal jurisdiction ~~that~~, the preliminary examination required in criminal cases be combined with and conducted as part of the hearing required under existing law to determine whether the minor is a fit and proper subject to be dealt with under the juvenile court law. The bill would require a ~~judge of the juvenile court~~ *judicial officer, commissioner, or referee* to conduct the preliminary examination and hearing and to make specified findings to be made in order to have the minor tried in a court

of criminal jurisdiction. The bill would require the Judicial Council to adopt rules for implementation of the bill.

Because this bill would impose increased duties on the local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 707.02 is added to the Welfare  
2 and Institutions Code, to read:

3 707.02. (a) When a prosecuting attorney seeks to  
4 have a minor tried in a court of criminal jurisdiction, the  
5 preliminary examination conducted pursuant to Section  
6 738 of the Penal Code shall be combined with and  
7 conducted as part of the hearing conducted pursuant to  
8 Section 707.

9 (b) In a case subject to subdivision (a), the committing  
10 magistrate who presides over the preliminary  
11 examination provided for in Section 738 of the Penal  
12 ~~Code shall be a judge of the juvenile court. Code shall be~~  
13 ~~a judicial officer, commissioner, or referee.~~

14 (c) During the preliminary examination and hearing,  
15 the committing magistrate shall make both of the  
16 following findings in order to have the minor tried in a  
17 court of criminal jurisdiction:

18 (1) That the minor is a person who is not a fit and  
19 proper subject to be dealt with under the juvenile court  
20 law pursuant to Section 707.

21 (2) That it appears a public offense triable in the  
22 superior court has been committed and there is sufficient  
23 cause to believe that the minor is guilty.

(d) If the committing magistrate makes the findings set forth in subdivision (c), he or she shall issue an order pursuant to Section 872 of the Penal Code that requires the minor to be held to answer to the public offense. Upon the minor being held to answer pursuant to Section 872 of the Penal Code, Section 739 of the Penal Code and the laws applicable to criminal cases in the superior court shall apply thereafter.

(e) If the committing magistrate does not make the findings required by subdivision (c), the matter shall then proceed pursuant to the applicable procedures of the juvenile court law.

(f) In addition to its other powers and duties, the Judicial Council shall adopt rules for fully implementing this section to ensure that it works in tandem with all court efficiency measures.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.